

Due Process in Medical Education: Legal Considerations

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Richard M. Conran, PhD, MD, JD¹, Carrie A. Elzie, PhD¹,
Barbara E. Knollmann-Ritschel, MD², Ronald E. Domen, MD³,
and Suzanne Zein-Eldin Powell, MD⁴

Abstract

Throughout the medical education continuum, some students encounter difficulty in meeting academic or professional standards that leads to remediation or dismissal. Termination of a student without due process may lead to litigation by deprivation of a student's property or liberty interest. This article outlines the concept of procedural and substantive due process as applied to litigated student dismissal cases in undergraduate and graduate medical education. Determination of the amount of due process owed is based on whether the dismissal is academic or nonacademic. The decision to dismiss a student where the entire student record has been reviewed, due process provided, and the institution complied with its own policies is usually upheld by the courts in litigation.

Keywords

due process, student remediation, student dismissal, case law, professionalism

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“University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.” This excerpt from the US Supreme Court's decisions in *Board of Curators, Univ. of Missouri v Horowitz* and *Regents of the University of Michigan v Ewing* serves as a guiding principle in how due process of the law is meted out in both remediation and termination processes in undergraduate medical education (UME, medical school) and graduate medical education (GME, internship/residency).^{1,2} Where academic decisions appear arbitrary and capricious, the courts take a different approach even if the decision is purely academic. Ignoring due process during student termination has the potential to lead to litigation by deprivation of liberty or property interests. This article presents an overview of due process considerations through a series of litigated cases. Table 1 outlines due process issues raised in medical education and Table 2 outlines common scenarios encountered in student dismissal cases.

Due Process Defined

Section 1 of the 14th amendment to the US Constitution states in part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”³

¹ Department of Pathology, Eastern Virginia Medical School, Norfolk, VA, USA

² Department of Pathology, Uniformed Services University of the Health Sciences, Bethesda, MD, USA

³ Department of Pathology, Penn State Hershey Medical Center, Hershey, PA, USA

⁴ Department of Pathology, Houston Methodist Hospital, Houston, TX, USA

Corresponding Author:

Richard M. Conran, Department of Pathology, Eastern Virginia Medical School, 700 West Olney, Norfolk, VA 1980, USA.

Email: conranrm@evms.edu



Table 1. Due Process Issues in Medical Student/Resident Dismissal Cases.

What is due process?
How does procedural due process differ from substantive due process?
Was the student dismissal for academic or nonacademic reasons?
How much due process is owed?
Does the amount of due process owed vary if it is an academic versus nonacademic reason?
Is a resident considered a student or an employee?

Table 2. Common Scenarios in Student Due Process Dismissal Cases.

Undergraduate medical education
Failure of courses/modules in the preclerkship curriculum
Failure of USMLE Step exams
Failure of clerkships
Lack of professionalism
Graduate medical education
Failure of in-service exams/USMLE Step 3
Lack of clinical skills and judgment
Lack of professionalism

Due process of law refers to safeguards and procedures that are in place to protect a person's rights from state government (14th amendment)³ or federal government (5th amendment)⁴ action.⁵ Due process has 2 components, procedural due process and substantive due process. Procedural due process implies that an individual being deprived of a liberty or property interest will receive notice and is presented with the opportunity to be heard. Substantive due process implies that the state's (institution's) decision is not arbitrary or capricious.

In the academic setting, students dismissed from their respective UME or GME programs have argued deprivation of liberty and property interests due to lack of due process. In *Horowitz*, discussed subsequently, the student alleged that dismissal from medical school "deprived her of 'liberty' by substantially impairing her opportunities to continue her medical education or to return to employment in a medically related field."¹ The US Supreme Court (Supreme Court) in *Horowitz*, held where the results are not published as to stigmatize an individual but are communicated directly to a student, there is no liberty interest deprivation.¹ Additionally, they held there is no fundamental right to education in the US Constitution.

Whereas property interests are a creation of state law, some jurisdictions hold that admission to medical school is a property interest requiring due process.^{1,2} This view is not universal.^{6, 7}

Accreditation Standard

Due process is a UME and GME accreditation standard (Table 3).^{8,9} Students dismissed from their respective programs for not meeting academic and professional requirements have raised accreditation standards in litigation.

Table 3. Liaison Committee on Medical Education (LCME)* and ACGME† Due Process Accreditation Standards.

LCME Standard 9.9 states: 9.9 Student Advancement and Appeal Process "A medical school ensures that the medical education program has a single set of core standards for the advancement and graduation of all medical students across all locations. A subset of medical students may have academic requirements in addition to the core standards if they are enrolled in a parallel curriculum. A medical school ensures that there is a fair and formal process for taking any action that may affect the status of a medical student, including timely notice of the impending action, disclosure of the evidence on which the action would be based, an opportunity for the medical student to respond, and an opportunity to appeal any adverse decision related to advancement, graduation, or dismissal." ⁸
ACGME institutional requirements IV C states: "IV.C. Promotion, Appointment Renewal and Dismissal IV.C.1. The Sponsoring Institution must have a policy that requires each of its ACGME-accredited programs to determine the criteria for promotion and/or renewal of a resident's/fellow's appointment. (Core) IV.C.1.(a) The Sponsoring Institution must ensure that each of its programs provides a resident/fellow with a written notice of intent when that resident's/fellow's agreement will not be renewed, when that resident/fellow will not be promoted to the next level of training, or when that resident/fellow will be dismissed. (Core) IV.C.1.(b) The Sponsoring Institution must have a policy that provides residents/fellows with due process relating to the following actions regardless of when the action is taken during the appointment period: suspension, non-renewal, non-promotion; or dismissal. (Core) IV.D. Grievances: The Sponsoring Institution must have a policy that outlines the procedures for submitting and processing resident/fellow grievances at the program and institutional level and that minimizes conflicts of interest. (Core)" ⁹

*The Liaison Committee on Medical Education (LCME) accredits US and Canadian allopathic medical schools.

†The Accreditation Council for Graduate Medical Education (ACGME) accredits US internships and residencies.

Legal Precedent Used by the Courts

Medical education is divided into UME and GME. Failure to provide due process is raised in many cases of medical student and resident dismissal. The critical question is how much due process is required. This question was addressed in the following 2 Supreme Court cases. The Court's findings are summarized in Table 4.

Case 1

Charlotte Horowitz was a medical student admitted to the University of Missouri with advanced standing in 1971. Her pre-clerkship grades and National Board of Medical Examiners (NBME) examination scores were passing. During her clerkship in pediatrics, the faculty expressed dissatisfaction with her clinical performance (including her personal hygiene, peer and patient relationships, and timeliness) concluding it was below the standards of her peers. As part of the institutional policy, student performance was reviewed by a committee composed

Table 4. Summary of US Supreme Court's Decisions in *Horowitz and Ewing*.^{1,2}

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- There are strong policy considerations for allowing academic institutions wide latitude, especially in the field of medicine, in developing academic standards and insuring student compliance with the standards.
 - Academic institutions are in the best position versus a judicial hearing to determine whether a student's performance meets the profession's requirements.
 - Dismissal of a student for academic reasons requires expert evaluation of cumulative facts.
 - Courts are particularly ill equipped to evaluate academic performance. Judicial review of purely academic decisions is not warranted. Courts lack the professional judgment on what characteristics are appropriate for the practice of medicine.
 - Student dismissal based on academic and professional factors is subjective in nature.
 - Courts should defer to the faculty's professional judgment in purely academic decisions.
 - Courts should not overrule an institution's decision unless the institution's decision deviates from acceptable academic norms raising concerns that the institution did not exercise professional judgment.
 - Due process is an extremely flexible concept when applied to educational decision-making.
 - School decisions that are arbitrary and capricious or where the student was not notified are issues for a judicial venue.
 - The amount of due process owed is based on whether a case is framed as academic vs nonacademic (disciplinary).
 - For purely academic dismissals in the education arena, a formal hearing is not required where a student's liberty or property interest is at risk. For disciplinary (nonacademic) dismissals, that are objective and factual, a hearing is required.
 - A school's decision to dismiss a student, where the entire student record has been reviewed, due process provided, and the institution complied with its own policies are usually upheld in litigation.
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of faculty and students (Council of Evaluation) who made a recommendation on student disposition including probation and dismissal. Their findings were subsequently reviewed by a faculty committee and then by the Dean. The Council of Evaluation recommended probation for Horowitz. Further faculty dissatisfaction was encountered as the year progressed and the Council recommended absent "radical improvement" dismissal. On all occasions, Horowitz was notified of the committee's findings and dissatisfaction with her performance. As part of an appeal process, the school allowed her to be examined by 7 practicing physicians. Two of the 7 recommended she continue as a student. The other 5 recommended continuation on probation or dismissal. Subsequently, the student received poor evaluations in 2 more clinical rotations and the Council recommended dismissal. The Coordinating Committee and Dean upheld the recommendation. Upon appeal by Horowitz to the Provost, the Provost upheld the Dean's recommendation. Based on the school's action, Horowitz filed a lawsuit stating she had not received due process. The district court found due process was adequate.

On appeal, the Court of Appeals reversed the lower court's findings stating there was failure of procedural due process,

since Horowitz was not allowed a formal hearing before the Council of Evaluation. The Supreme Court reviewed the case and concluded there was adequate procedural and substantive due process and upheld the student's dismissal.¹

Case 2

Scott Ewing was a student enrolled in a 6-year program of study at the University of Michigan in 1975 where an undergraduate degree and MD degree were awarded upon successful completion of the program. In 1981, he completed the requirements of the first 4 years of the program. The program had a requirement that students pass Part 1 of the NBME exam (predecessor to United States Medical Licensing Examination (USMLE) Step 1). Ewing failed Part 1 with a score of 235 (345 was passing, 380 was required for state licensure, and the national mean was 500). The 235 score was the lowest score ever recorded in that program. The performance of several students was subsequently reviewed by a 9-member Promotions and Review Board. The Board reviewed Ewing's entire academic record that included marginally passing grades, a number of incompletes and makeup examinations while on a reduced course load, and recommended dismissal. Ewing subsequently appeared before the Board offering reasons for his substandard performance to include his mother's heart attack 18 months prior to the exam, breaking up with his girlfriend 6 months prior to the exam, and being distracted with an essay contest. The Board affirmed their original recommendation. Ewing subsequently appeared in front of the Executive Committee on several occasions who upheld the decision and denied readmission. In 1982, Ewing commenced litigation in District Court arguing that his "dismissal was arbitrary and capricious, violating his 'substantive due process rights' guaranteed by the 14th amendment." Testimony documented that Ewing had academic difficulties throughout his tenure even with a reduced course workload and had appeared on several occasions before the Board. Evidence was introduced that other students who had failed Part 1 were given subsequent opportunities to pass the exam. The school admitted that should a student fail either part of the NBME exam, an opportunity is given to the student to retake the exam.

The District Court found Ewing had a property right in his education, but there was no violation of his due process rights. The court stated the "decision to dismiss the student was reached in a fair and impartial manner, and only after careful and deliberate consideration." It was "not arbitrary or capricious." Upon appeal, the Court of Appeals reversed the decision stating the failure for Ewing not to be allowed to retake the NBME exam violated its practice of allowing students a second retake opportunity. Evidence indicated Ewing was the only student who initially failed between 1975 and 1982 who was not allowed to retake the exam. The Court directed the University to allow him to retake the exam and if he passed the exam to reinstate him. The University of Michigan appealed the decision to the Supreme Court.

The Supreme Court reversed the Court of Appeals' decision and agreed with the District Court. They commented that there was no established rule that students had a right to retake the

exam. It was just a customary practice. Evidence indicated other students with academic deficiencies were not allowed to take Part 1 at all. Their conclusion was that the Board's decision was "made conscientiously and with careful deliberation, based on an evaluation of the entirety of Ewing's academic career." The decision to dismiss him "rested on an academic judgment that is not beyond the pale of reasoned academic decision-making when viewed against the background of his entire career at the University of Michigan, including his singularly low score on the NBME Part 1 examination."²

The Supreme Court held the school's decision to dismiss Horowitz "rested on the academic judgment of school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal. Such a judgment is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision. Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making."¹ The Court majority held, for purely academic reasons, a hearing was not required with the dissenting opinion commenting that an informal hearing should be required. The decision stated a hearing is expected, however, in a disciplinary (nonacademic) scenario.

In *Ewing*, the court held the dismissal of Ewing "from the Inteflex program rested on an academic judgment that is not beyond the pale of reasoned academic decision-making when viewed against the background of his entire career at the University of Michigan, including his singularly low score on the NBME Part 1 examination."² Ewing's dismissal did not "substantially deviate from accepted academic norms when compared with its treatment of other students."² The Supreme Court further commented that the "Promotion and Review Board presumably considered not only the raw statistical data but also the nature and seriousness of the individual deficiencies and their concentration in particular disciplines—in Ewing's case, the hard sciences."² The Board did take into account the "numerous incompletes and makeup examinations Ewing required to secure even marginally passing grades, and it could view them in connection with his reduced course loads. Finally, [the Board] was uniquely positioned to observe Ewing's judgment, self-discipline, and ability to handle stress, and was thus especially well-situated to make the necessarily subjective judgment of Ewing's prospects for success in the medical profession."² The Court stated that even if the institution had looked at the dismissal from Ewing's perspective, it might have concluded, "that Ewing's sensitivity to difficulties in his personal life suggested an inability to handle the stress inherent in a career in medicine. The inordinate amount of time Ewing devoted to his extracurricular essay writing may reasonably reveal to the University a lack of judgment and an inability to set priorities." Therefore, rejection of Ewing's arguments was not irrational.²

In both *Horowitz* and *Ewing*, the Supreme Court concluded that adequate due process was provided. In deciding the cases, the Court assumed Horowitz and Ewing had a property interest but never decided that issue. Relying on *Horowitz*, the critical question is whether a dismissal is *academic or non-academic*.¹ Other questions do remain, however. Most important is how much due process is owed, is a formal hearing required, does a student have a right to an attorney or have the meeting transcribed, and what distinguishes an academic from nonacademic dismissal?

Due Process in Undergraduate Medical Education

Common issues in UME resulting in student dismissal are classified into failure of basic science course work, failure of USMLE Step examinations, failure of clerkships, and professionalism. Table 5 outlines several cases where the preceding issues and lack of due process arose in addition to other causes of action.^{1,2,5-7,10-30}

Failure of Courses/Modules in the Preclerkship Curriculum

Case 3

Jacqueline Leacock was a student at Temple University School of Medicine. During her first year of medical school, she received nonpassing grades in 7 courses obtaining 21 of 30 points in their grading scheme. Based on their written policy available to students, the student had not achieved the required 30 points to be promoted to the next academic year. The student was notified she would be dismissed by the Associate Dean for Curriculum consistent with the student handbook. The student appealed the decision to the Student Promotions Committee citing learning difficulties that became apparent during the first year. The record indicated she asked for a leave of absence and that she had never notified the school of the issue (learning difficulties) prior to her appeal letter. The Committee deferred on her request requiring more documentation on the learning deficit. The student was evaluated and found to have attention deficit disorder and mixed receptive expressive language disorder by an expert. Expert opinion from 2 other individuals in testing and education was not conclusive of the disorder. Based on the documentation received, the Promotions Committee upheld its decision for dismissal. Consistent with the student handbook, Leacock appealed the decision to the Dean. Stating no procedural irregularities, the Dean upheld the Promotions Committee's recommendation.¹⁰

The student filed legal action claiming her procedural due process rights were violated by the school for not notifying her that the Promotions Committee met to discuss her case and did not speak to her about the alleged disability. The Court held that the only procedural due process required was more of an "informal give-and-take" in purely academic decisions. In this

Table 5. Medical Student Dismissal Cases That Raised Lack of Due Process in Addition to Other Causes of Action.

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
Failure of courses/modules in preclerkship curriculum			
<i>Giles v Howard University</i> ⁵ (1977)	Academic	Student passed all first semester courses except biochemistry. School allowed him to continue and he passed all second semester courses but failed biochemistry retake, a curriculum requirement. Student was put on academic probation and required to repeat first-year courses including biochemistry. During his repeat first year, he passed biochemistry and failed anatomy and was dismissed. Student requested readmission. The school said they would consider the request provided he passed the NBME subject exams in anatomy, biochemistry, microbiology, and physiology. He failed all 4 exams and his request for readmission was denied. He filed a lawsuit raising due process issues. The court found under the school's promotion policy it had the right to dismiss failing students and it had provided the student an opportunity to remediate. See text Case 3.	Dismissal upheld
<i>Leacock v Temple University School of Medicine</i> ¹⁰ (1998)	Academic	Student failed 2 second year courses, pathology and pharmacology at Penn State and was dismissed for academic reasons. She filed a lawsuit for due process violation. Penn State settled with her in which she agreed to withdraw from the school and not seek reenrollment. Penn State had agreed to accept her remedial courses in pathology and pharmacology from another school and state she had completed 2 years of medical school and was a student in good standing. The student subsequently applied to other schools but was informed she could not be considered a transfer student without passing the NBME Part 1 exam. Not having student status, she was ineligible for the NBME exam or admission as a transfer student. She filed a lawsuit alleging she was fraudulently induced to settle with Penn State and that Penn State's failure to provide her means to transfer to a different accredited medical school deprived her of her educational property rights without due process.	Dismissal upheld
<i>Naglak v Berlin</i> ¹¹ (1989)	Academic	Student failed 2 second year courses, pathology and pharmacology at Penn State and was dismissed for academic reasons. She filed a lawsuit for due process violation. Penn State settled with her in which she agreed to withdraw from the school and not seek reenrollment. Penn State had agreed to accept her remedial courses in pathology and pharmacology from another school and state she had completed 2 years of medical school and was a student in good standing. The student subsequently applied to other schools but was informed she could not be considered a transfer student without passing the NBME Part 1 exam. Not having student status, she was ineligible for the NBME exam or admission as a transfer student. She filed a lawsuit alleging she was fraudulently induced to settle with Penn State and that Penn State's failure to provide her means to transfer to a different accredited medical school deprived her of her educational property rights without due process.	Dismissal upheld
<i>Nichols v McDonald</i> ¹³ (1990)	Academic	Student was admitted to the University of Iowa's College of Medicine Educational Opportunities Program designed to give disadvantaged students access to a medical education. In this program, basic sciences courses are taken during the first 3 semesters. Student had academic difficulties failing biochemistry during the first semester that he remediated, failing physiology during the spring semester that was remediated at a different school after having been put on probation. He was taken off probation and passed all second-year fall courses. During his fourth semester, he failed the school's Introduction to Clinical Medicine (ICM) course and was put on probation with the requirement to pass the course during the spring semester. Student appealed the decision requesting he take a make-up exam. The school's Promotions Committee denied the request. He took a leave of absence and failed the ICM course upon his return for the spring semester. The Promotions Committee reviewed his entire academic record and recommended dismissal. On appeal, the school's Executive Committee upheld the dismissal. The student filed a lawsuit claiming the Promotions Committee's decision deprived him of his procedural due process rights. Student was admitted to University of South Alabama. During his first year, he was enrolled in 10 different courses. He received 4 failing grades, 1 below average but passing grade, 1 average grade, and 4 passing grades. The school's promotions committee reviewed the student's entire academic record and recommended dismissal. The student appeared in front of the committee stating financial difficulties and family problems interfered with his studies and requested that he be allowed to repeat the first year. The committee reaffirmed their dismissal decision which was upheld by the Dean on appeal. The student filed a lawsuit alleging racial discrimination, breach of contract for failing to comply with the student bulletin, and lack of due process.	Dismissal upheld
<i>Watson v University of South Alabama College of Medicine</i> ¹⁴ (1979)	Academic	Student was admitted to University of South Alabama. During his first year, he was enrolled in 10 different courses. He received 4 failing grades, 1 below average but passing grade, 1 average grade, and 4 passing grades. The school's promotions committee reviewed the student's entire academic record and recommended dismissal. The student appeared in front of the committee stating financial difficulties and family problems interfered with his studies and requested that he be allowed to repeat the first year. The committee reaffirmed their dismissal decision which was upheld by the Dean on appeal. The student filed a lawsuit alleging racial discrimination, breach of contract for failing to comply with the student bulletin, and lack of due process.	Dismissal upheld

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
Failure of USMLE Step examinations			
<i>Regents of the University of Michigan v Ewing</i> ² (1985)	Academic	See text Case 2.	Dismissal upheld
<i>University of Mississippi Medical Center v Hughes</i> ¹⁵ (2000)	Academic	Student at time of enrollment in 1992, based on the school's academic guidelines, was required to maintain a grade point average (GPA) of 75. There was no requirement to pass the USMLE, although it was a state requirement for licensure. In 1993, the school's faculty recommended passage of the USMLE as a requirement to enter the junior year, a requirement set by most medical schools. Students were notified of the requirement in 1993. Student passed all his courses, but failed the USMLE twice in 1994. The school provided him the option to enroll in a self-study program with leave of absence until the 1995 exam. In 1995, the school required passing Step 1 and students failing the exam would be dismissed. In 1995, student failed the exam, his third attempt and was dismissed. Student appealed the dismissal but it was upheld. Student filed a lawsuit alleging breach of contract by the school for changing its graduation requirements and lack of due process. A lower court stated that the school's decision was arbitrary and for the school to allow the student to sit for the 1997 exam and readmit the student so he could sit for the exam. The school challenged this decision at an appellate court. The appellate court reversed the lower court's decision and stated due process had been provided and the school had the right to modify its education requirements given that passage of the USMLE was a state requirement for licensure.	Dismissal upheld
<i>Ward v Rush-Presbyterian-St. Lukes Medical Center</i> ¹⁶ (1986)	Academic	Rush Medical College adopted a rule requiring students pass the NBME Part I exam prior to starting their third year. Students failing the exam by November of their third year were put on probation with their entire academic record reviewed by the Promotions Committee. Students who failed it 3 times were subject to dismissal and removed from clinical duties to prepare for the exam. Several students filed a lawsuit alleging the school's NBME requirement was arbitrary and capricious and they were victims of racial discrimination. The court held the faculty's professional judgment on standards was not reviewable and there had been adequate due process and no evidence of discrimination.	Dismissal upheld
Failure of clerkships			
<i>Bain v Howard</i> ¹² (2013)	Academic	Student enrolled at Howard University. He passed his first-year courses. During his second year, he failed a neuroscience course which he successfully remediated. He subsequently failed USMLE Step 1 but passed it on his second attempt. During his third year, he failed the NBME subject exams in psychiatry and surgery. He failed retake exams which led him failing the clerkships. He also failed the subject exam in obstetrics but did not take a retake. Per Howard's policy, he could have been dismissed for failing 2 clerkships; however, Howard let him repeat the third year. During his second attempt at the third-year curriculum, he failed the NBME subject exams in pediatrics, psychiatry, and obstetrics leading to his dismissal per school policy. He subsequently filed a lawsuit alleging breach of contract and failure to comply with LCME standards. The court agreed there was a contractual obligation; however, stated that his repeated NBME subject exam failures, exams graded external to Howard, did not indicate arbitrariness on Howard's part and his dismissal was for academic reasons.	Dismissal upheld
<i>Board of Curators of University of Missouri v Horowitz</i> ¹ (1978)	Academic	See text Case 1.	Dismissal upheld

(continued)

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
<i>Eiland v Wolf</i> ⁷ (1989)	Academic	Student had completed all the school's academic requirements except for a fourth-year elective course in community health that led to his dismissal. He filed a lawsuit alleging lack of due process and violation of his equal protection rights. A lower court agreed with the student and directed reinstatement and awarding of the MD degree. The school appealed the decision. The appellate court reviewed the student's entire academic record and commented that the student had failed 4 clinical rotations that included internal medicine, pediatrics, and dermatology that were remediated. The school's Promotions Committee that reviewed the entire student record prior to graduation recommended dismissal. The student had requested the committee to reverse their recommendation which was to no avail. The student then appealed to the Dean who reversed the committee's dismissal decision and put the student on probation. The student subsequently remediated the clerkships he failed, but failed the community health requirement, a graduation requirement. The Promotions Committee reviewed the student's entire record again and recommended dismissal, which was upheld by the Dean the second time leading to the student to seek legal redress.	Dismissal upheld
<i>Greenhill v Bailey</i> ¹⁸ (1974)	Academic	Student was accepted with advanced standing after his application for admission through the traditional process had been rejected twice. His undergraduate GPA was 2.54 where the mean of the accepted class was 3.4. Prior to his acceptance, he completed 2 years at the College of Osteopathic Medicine where his grades were at the bottom of the class. He failed the NBME Part I exam but passed it on retake. During his clerkships, he failed obstetrics and internal medicine and received the lowest passing grade in pediatrics. The Promotions Committee reviewed the student's entire academic record and recommended dismissal which was upheld by the school. The student filed a lawsuit alleging the school's decision was arbitrary and capricious based in part on subjective evaluation during clerkships and that there was lack of procedural due process due to the student not being allowed to be present at a Junior Class Promotion Committee meeting.	Dismissal upheld
<i>Hill v University of Kentucky</i> ¹⁹ (1992)	Academic	See text Case 4.	Dismissal upheld
<i>Lunde v Iowa Board of Regents</i> ²⁰ (1992)	Academic	Student entered medical school in 1985. During her preclerkship courses that she passed, she was noted to have issues relating to others, inappropriate behavior, falling asleep in class, and the inability to prioritize information, separating relevant from irrelevant data. During her clerkships, her behavior toward faculty, residents, and her peers was inappropriate and she was unable to synthesize relevant information leading to her failing several clerkships, neurology, urology, and obstetrics. She was placed on probation and allowed to retake the clerkships she failed. She failed them a second time and the school dismissed her. She filed a lawsuit alleging sexual discrimination, equal protection violation, and violation of free speech and due process concerns.	Dismissal upheld
<i>Moire v Temple University School of Medicine</i> ²¹ (1985)	Academic	Student was enrolled in Temple. During her third year, she failed her psychiatry clerkship. The Student Promotions Committee, after reviewing her entire record, recommended she repeat the entire third year on probation. The Committee's decision was upheld after appeal to the Dean. She subsequently graduated from Temple and obtained an internal medicine residency. She then filed a lawsuit alleging sexual harassment (Title IX) leading to her failure of psychiatry clerkship and lack of due process.	Claim dismissed. No due process violation. No sexual discrimination.
<i>Mustell v Rose</i> ²² (1968)	Academic	Student passed his preclerkship courses and failed medicine and surgery during his third-year clerkships. The school's policy was that a student could repeat a failure of one course but failure of 2 courses in the same academic year led to dismissal. The student Promotions Committee reviewed the entire student record and recommended dismissal. The student was notified by mail of the Committee's decision. The Dean approved the recommendation and notified student. The student filed a lawsuit alleging he did not have the opportunity to appear before the Promotions Committee and his failing grades were arbitrarily decided.	Dismissal upheld

(continued)

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
<i>Sofair v State University of New York</i> ²³ (1976)	Academic	Student had academic difficulty during his medical school curriculum. He failed pathology during his second year that was remediated. He failed medicine and surgery during his third year that were successfully remediated. He failed nephrology during his fourth year. At the time his peers graduated, he still lacked 2 courses required for graduation. The school's Promotions Committee, based on review of his academic record including grades and narratives, recommended he repeat the entire fourth year following a structured program designed by the Promotions Committee. During his repeat fourth year he took 4 courses, passing 3 and failing a 6 week surgery internship. He had secured an internship in medicine. The Fourth Year Medical Grades Committee notified student in writing they were recommending dismissal because he failed to demonstrate adequate clinical aptitude. He was notified that he had the right to appeal. The school's Committee on Academic Promotions had reserved time for him later that day, the day he was notified. He received a second letter from the Committee that day stating they were following the Grade Committee's recommendation. Student filed a lawsuit alleging the school's decision was arbitrary and capricious. Student stated that there was lack of procedural due process given that he received notice of dismissal without notifying him of the factual basis for the deficiencies noted in his clinical aptitude and not providing him time to appear in front of the Academic Promotions Committee to present his side of the case. The court reversed the student's dismissal and notified the school to provide the student a detailed written statement regarding findings used to conclude student lacked clinical aptitude and provide student the opportunity to be heard after he had time to review the written statement. After the hearing, the school could make a more informed decision regarding dismissal the court stated.	Dismissal reversed pending adequate notice to student and hearing
<i>Stoller v College of Medicine</i> ²⁴ (1983)	Academic	Student entered school in 1976. During the fall term, he failed microbiology and was placed on probation. In the winter term, he failed biochemistry. His record was reviewed and he was informed he would be subject to dismissal without improvement. He was allowed to enter the second year on probation. During his second year, he passed behavioral science but the course director commented his responses to questions reflected poorly on his discretion and judgment. His record was reviewed and based on comments from the behavioral science course was considered for dismissal. He was directed to discontinue research and focus on academics. Subsequently, he was taken off academic probation. During his third year, he failed surgery and was notified by the Promotions Committee that he was subject to dismissal and placed on probation. He passed his psychiatry, neurology, and obstetrics clinical rotations. Halfway through his pediatrics clerkship, he was perceived as being weak and told by the clerkship director to improve his academic performance. The pediatrics' faculty met and awarded grades to all students except for this student. The department decided to give him an oral exam due to weakness in his clerkship performance. Although his fund of knowledge was passable, the examiners felt he should repeat the clerkship. The clerkship director, based on all evaluations and the exam results, gave student a failing grade. The Promotions Committee met and reviewed his entire record and recommended dismissal after the student had appeared. The student's record was reviewed by the Dean after meeting with the student and the student was dismissed. His appeal to the university President was denied. The student filed lawsuit alleging the dismissal decision was arbitrary and capricious and lacked procedural due process.	Dismissal upheld

(continued)

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
Lack of professionalism <i>Abbas v Woleben</i> ⁶ (2013)	Academic	Student was admitted to medical school in 2006. After completion of the first 2 years of school, the school granted student 5 leaves of absence for health and personal reasons from June 2008 until January 2011. Student had been recommended for dismissal in 2009 for not taking the USMLE by Promotions Committee. The recommendation was not upheld by the Dean. In January 2011, he was given notice of an upcoming Promotions Committee meeting. The Promotions Committee met in January 2011 and recommended dismissal for lack of academic progress. The letter did not inform the student of his right to appeal. Further, the school administrators informed him that he could not protest decision. Student was dismissed and filed a lawsuit alleging breach of contract and lack of due process.	Dismissal upheld
<i>Corso v Creighton</i> ²⁵ (1984)	Academic	Student during his first year of medical school was accused of cheating on his first year final examinations. The student was notified of the allegation in writing. The Acting Dean established a committee to investigate the allegation. The committee stated that the student had collaborated with another student. The school's Advancement Committee recommended to the Executive Committee and Dean expulsion. The student was notified in writing and by phone. He was informed he could respond to the charge and respond to the Associate Dean for Student Affairs. Student met with the Associate Dean to discuss the issue denying the cheating. He requested to appear in front of the Executive Committee but that request was denied. The Acting Dean conducted his own investigation interviewing 20-25 students. The Acting Dean met with student and he denied cheating. Several of the other 25 students admitted cheating and implicated student in the cheating and student was expelled. Student filed a lawsuit alleging breach of contract. The lower court stated that student was dismissed for lying, a nonacademic offense, which required certain due process requirements. The appellate court disagreed and stated the offense was cheating, even though student lied about it and it was academic in nature. The appellate court also stated the student handbook is contractual. Based on procedures elaborated in the handbook, they found the school was not in compliance with their own policy that required a university committee, not school committee, to adjudicate serious offenses, expulsion meeting that criterion. The court concluded that the student must be afforded the procedural safeguards to appear before a university committee before the school rendered a decision.	Dismissal reversed pending committee hearing specified in student handbook
<i>Doherty v Nellis</i> ²⁶ (2016)	Nonacademic	Student was a second-year medical student who was alleged to have assaulted a staff member in the student recreational center in June of 2014. Review of the student's record documented going back to November 2012, there had been complaints of inappropriate behavior by female students at school functions against student. During 2013, female student members of the first-year class expressed concern about their safety and inappropriate behavior. The incident was addressed by the university through several meetings and dialogues with student and his attorney. In September 2014, the Student Conduct Board recommended dismissal. Student appealed decision to the university Provost who concurred with decision. Student filed a lawsuit alleging lack of due process, unlawful taking, violation of American with Disabilities Act, and conspiracy claim.	Dismissal upheld
<i>Fernandez v Medical College of Wisconsin</i> ²⁷ (1996)	Academic	Student was admitted in 1987 and entered school's 5 year program. During her second year, she took a semester leave of absence for scheduling issues and a subsequent semester leave of absence for health reasons. Student was warned by school's Academic Standing Committee of her lack of academic progress that could lead to dismissal. Student was informed by school that she needed to complete her biochemistry course, take a full load of second-year courses, and take the NBME	Dismissal upheld

(continued)

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
<i>Flaim v Medical College of Ohio</i> ²⁸ (2005)	Nonacademic	<p>exam in June. Due to issues at the school, the June exam was not offered. The school notified all students in a memo they were encouraged to take the exam in September. Student did not take the exam. The school's Academic Standing Committee reviewed student's entire academic record and recommended dismissal based on failure to meet previous mandates and unprofessional behavior. Unprofessional conduct identified was not taking the NBME exam, not taking other examinations, and repeated leaves of absence for personal and academic reasons. The Committee provided her notice and said they would consider other grounds they discovered. Student also received notice that it would consider evidence of unethical conduct (dishonesty) that included misrepresentation regarding loans, reasons for not taking NBME exam, lack of congruency in health insurance application, and false pledges during an alumni phonathon. At student's request, an ad hoc committee was convened to evaluate dishonesty claims. Student appeared with her attorney and was allowed to call witnesses and the session was tape-recorded. The Ad Hoc Hearing Committee found the dishonesty claims credible. The Academic Standing Committee subsequently convened and considered the dishonesty claims as being relevant to student's credibility. The Committee found she failed to demonstrate the required level of professional responsibility in not taking exams in a timely manner, not accepting responsibility for her actions, and disregarding mandates about the NBME exam. After review of her entire record, the Committee recommended dismissal. An Appeals Committee upheld the dismissal. Student filed a lawsuit alleging defamation, infliction of emotional distress, breach of contract, lack of substantive due process, conversion of student loan money, breach of fiduciary duty, and fraud.</p>	Dismissal upheld
<i>Jenkins v Hutton</i> ²⁹ (1997)	Academic	<p>Student was a third-year medical student arrested and convicted of a felony drug crime. Two days after his arrest, school notified him in writing that he was suspended until an external investigation/hearings were completed. He was also informed of his right for an internal investigation. He declined to appear until criminal charges were adjudicated. After pleading guilty to one charge, he contacted the school and received written notice that he would appear in front of Student Conduct and Ethics Committee. The Committee heard testimony from the arresting officer and was able to review portions of his criminal record. The Committee informed him after the hearing that it would provide the Dean with a written recommendation. The recommendation was never generated. The Dean expelled the student 2 days after the hearing for violation of the institution's code of conduct. Student filed lawsuit alleging lack of due process.</p> <p>Student passed the first 2 years of medical school without difficulty. Student failed the NBME Part I exam in June 1990. He also failed to show up for his third-year rotations. A month into the third year he requested a leave of absence to study for NBME exam. His request was granted. Student however did not take the next scheduled NBME exam in June 1991. He was called to a Promotions Board meeting in November 1991 to discuss why he didn't take the NBME exam. He failed to attend. In March 1992, he was requested to meet the Board again. He was informed he must take the exam in June 1992. He again did not take it. The Board sent him notice that he could not start his fourth year until he took the exam. He was also required to complete his final 2 years of coursework in 3 years requiring him to complete all course work by graduation day, June 1994. Student completed his third year during 1991-1992 academic year. He took only one course in order to study for NBME exam during the 1992-1993 academic year. He passed the NBME exam in June 1993. He passed all his fourth-year rotations with high pass or honors. He registered and completed his final rotation after graduation in June 1994. The Board met in June. Student was present and addressed the Board. The Board voted to adhere to its original guidelines of completion of all requirements by graduation day, June 1994 and voted for dismissal. Student appealed the decision. The decision was upheld by the Appeals Board and Dean. Student was dismissed for failure to complete the program in specified time period. Student filed lawsuit-alleging lack of due process.</p>	Dismissal upheld

(continued)

Table 5. (continued)

Case and Year Decided	Type of Dismissal	Case Scenario	Outcome
<i>Lee v University of Michigan-Dearborn</i> ⁷ (2007)	Nonacademic	Student was alleged to have interfered and harassed a university professor through obscene gestures, filming her, stalking her, and sending her slanderous e-mails. Inappropriate comments were present in some assignments. The faculty member filed a complaint against the student. A hearing was conducted by a Non-Academic Conduct Board where the student, university professor, and other witnesses appeared. Evidence indicated that the university professor had obtained a personal protection order against the student. The University's Hearing Board found the student guilty of the following university code violations: "B.3 Interfering with Liana McMillan's University business, ie, studying, teaching, administration; B.5. Harassment, ie, stalking that involved deliberate interference or a deliberate threat to Liana McMillan; B.7. Failing to comply with the directions of University officials and campus safety; B.14. Violating published University policies, including those regarding affirmative action." The Hearing Board recommended expulsion. The student appealed the decision to a university Code Appeals Board. The Board found that the student had adequate due process but the sanction of expulsion was too excessive and reduced the penalty to "expulsion in abeyance" with the condition of no further contact (verbal, written, electronic, or other contact) with the professor and the student pursue counseling. Violation of this condition would lead to expulsion and the student was allowed to continue classes. While the student was appealing the Code Appeals Board's decision in the Michigan Court of Claims, she was expelled for violating the no-contact provision for sending an e-mail where the professor along with others were contacted. See text Case 5.	Due process claim dismissed
<i>Stathis v University of Kentucky</i> ³⁰ (2005)	Nonacademic	See text Case 5.	Dismissal upheld

Abbreviation: LCME, The Liaison Committee on Medical Education.

case, the student had received adequate notice to discuss her learning disability with the Promotions Committee and to appeal the decision. Adequate procedural due process was provided.

Addressing potential substantive due process rights and relying on *Horowitz*, the court stated, “Where there is an academic dismissal, as in the present case, it has been held that ‘courts are ill-equipped to review the largely subjective academic appraisals of the faculty.’”¹⁰ Citing *Ewing*, the Court stated judges, when they are “asked to review the substance of a genuinely academic decision, they should show great respect for the faculty’s professional judgment.”¹⁰ Courts lack the knowledge to understand the decision by academic faculty and therefore are not suited to “override an academic decision of the school authorities unless the decision is such a substantial departure from accepted academic norms so as to demonstrate that the persons responsible for the decision did not actually exercise professional judgment.”¹⁰ Given that Temple followed its student handbook and that termination of students with grades analogous to Leacock’s grades is consistent with good academic decision-making, there were no substantive due process issues.¹⁰

Failure of USMLE Step Exams

As previously discussed in *Ewing*, the Supreme Court stated dismissal for failing the NBME exam was an academic decision. It would not overrule an institutional academic decision where the institution provided procedural due process. In contrast, where academic decisions appear arbitrary and capricious, the courts may take a different approach even if purely academic.³¹

In a related case, *University of Mississippi Medical Center v Hughes*, a student with a poor academic record who failed the NBME examination 3 times, was dismissed.¹⁵ Procedural due process had been provided. An argument raised by the student was that when he was admitted, there was no requirement to pass Step 1 of the USMLE. The student stated the policies outlined in the student handbook were contractual. The Supreme Court of Mississippi concluded there was a contractual obligation, however, the university’s right to modify educational requirements is implicit in its contract with students. The implementation of a new grading requirement was not arbitrary and applied to all students and there was a rational basis for the change. There was no due process issue. In this case, the State of Mississippi had a requirement to pass USMLE Step exams for state licensure. Further, their student handbook stated policies could be modified.¹⁵

The student handbook issue has been raised in many cases. Many courts uphold the creation of a contractual relationship between the school and student.^{12,15,22,25} In *Abbas*, where a student was recommended for dismissal for lack of academic progress by a student Promotions Committee, and the student raised the point that the handbook created a contractual obligation, the court held “university handbooks and catalogs do not form a contract where the terms bind the university,” where there is a disclaimer that the university may change its terms at

any time or the handbook states “it is a useful guide” and “proposed modifications are always welcome.”⁶

Failure of Clerkships

Failure of clerkships, where student knowledge, clinical skills, and professionalism are assessed, is also addressed in *Horowitz*.¹ More recent cases support that clerkship failures are academic decisions (Table 5). In *Bain*, a Howard student failed several NBME (subject) clerkship exams that were a requirement for passing the clerkship. His entire record was reviewed by a Promotions Committee that allowed him to repeat the third year, but established in writing that failure of any clerkships in the third year would lead to dismissal. During his repeat third year, he failed 3 clerkships and was dismissed. The DC Court upheld the contractual nature of the student–university relationship. Given that the student had received procedural due process, that the policy to dismiss him had been outlined in the student handbook, and that the NBME exams were not graded locally, Howards’ dismissal decision was not arbitrary.¹²

Case 4

Philip Hill, a medical student at the University of Kentucky, had a poor academic record failing several courses that he remediated as well as failing USMLE Step 1 twice before passing it on the third attempt after a prolonged leave of absence to prepare for it. During this time, the student had received notice and had his academic record reviewed by a Promotions Committee as well as appeals to the Dean. During his third-year surgery clerkship, the student did not meet the grading requirements specified in the syllabus. The syllabus also included the phrase “The Department of Surgery reserves the right to assign an unsatisfactory grade for the entire clerkship if the student performs in an unsatisfactory manner in terms of professional behavior, interactions with patients, or on examinations.” Based on a number of incidents, including 6 absences of which 2 were excused, choosing patients with the same disease for examination in conflict with the syllabus and changing his on-call night schedule without notifying other students, the student received a failing grade. Specifically, the clerkship director stated that the failing grade was based on “several episodes of intellectual dishonesty, unsatisfactory ratings from both the students and myself, and a deficit in performance in areas such as self-responsibility for learning, relationships with peers and faculty, and attendance.” The student appealed the grade to the clerkship director and then to the Dean. The failing grade was upheld. The school’s Promotions Committee reviewed the clerkship performance and the student’s entire academic record and recommended dismissal. Subsequent appeals upheld the Committee’s decision with the Dean affirming the decision after reviewing the student’s seven-and-a-half-year association with the school. The student filed a lawsuit for being dismissed arguing violation of his “substantive and procedural due process rights.”¹⁹

The United States Court of Appeals for the Sixth Circuit cited *Ewing* using the following standard. “When judges are asked to review the substance of a genuinely academic decision . . . [such as in *Ewing*], they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.”^{2,19} The decision to award a failing grade for the surgery clerkship was not arbitrary nor capricious, and not inconsistent with academic norms. The dismissal decision was upheld.

The Court relied on the factors cited by Dr Schwartz, the “six absences with only 2 being excused; 18 unsatisfactory peer evaluations; “virtual absence” in attending operating room procedures during the first 10 weeks of the class; switching the on-call night without informing the other members of his rotation group; and the repeated use of identical material in patient writeups” in upholding the dismissal. The documented findings that were part of the legal transcript were found persuasive. Given that the student had notice, the opportunity to appeal, and have legal representation, the student was provided adequate due process. The school’s decision was careful and deliberate.¹⁹

Lack of Professionalism

Professionalism is a competency demanded by one’s profession and the public. Specifically, “professional competence is the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served.”³² Each institution has its own guidelines on what constitutes unprofessional behavior. In student dismissal cases for unprofessional behavior, due process arguments are held to a higher standard.

In *Corso*, a Creighton University student was accused of cheating on his final examinations. Creighton considered the incident as an academic disciplinary issue.²⁵ His case was reviewed by a special School of Medicine committee. The Advancement Committee’s recommendation to the Executive Committee and Dean was for dismissal. The student was notified in writing of the charges and provided with evidence by the Associate Dean for Student Affairs. The student’s request to appear in front of the Executive Committee to present evidence was rejected and he was informed meeting with the Dean of the School of Medicine would not change the decision. Nonetheless, the Dean met with Corso and conducted his own investigation. The dismissal was upheld, and Corso began litigation against Creighton.

Upon reviewing the case, the District Court held the incident was nonacademic given the student lied about his cheating, and the university did not follow its procedures for nonacademic offenses. Following the decision, the Court of Appeals held it was an academic issue, but agreed that there was a contractual obligation between the school and the student. The student handbook stated “that a University Committee hearing may

be requested in *all* cases involving a *serious* penalty,” with the right to appeal to the President of the university. Relying on the student handbook as the basis of the contract, the Court held that Creighton breached its contract by not allowing the student to appeal to the University’s Committee on Student Dismissal, a university committee outside the School of Medicine. The Court stated that the appropriate procedures specified in the student handbook needed to be followed before the student could be dismissed.²⁵

In *Lee*, a student was dismissed for interference and harassment of a university professor.⁷ The dismissal was considered nonacademic. The legal transcript documented that the student received written notice and was given the opportunity to appear at a hearing also attended by the university professor. The hearing board recommended expulsion, which Lee appealed. The final decision given was “expulsion in abeyance” where the student would be expelled if she further contacted the professor. Subsequently in a multisender e-mail, the professor was contacted and the student expelled for violating a no-contact provision. The student filed litigation claiming lack of procedural and substantive due process when the school upheld the appeal board’s decision. The court found that the student had no clearly established constitutional right to due process based upon her expectation of continued enrollment and that the due process provided was adequate.⁷

Case 5

Michael Stathis was a student at the University of Kentucky. He completed his first 2 years of medical school with distinction. During his clinical OB/GYN rotation, he was found to have made hostile threats against a fellow student. An investigation was performed that documented violations of the school’s Health Sciences Student Professions Professional Behavior Code. A hearing, that Stathis elected, determined that Stathis physically threatened a fellow student while engaged in clinical activities. Similar incidents of hostile behavior directed toward others were also documented. A psychiatric report documented the type of behavior Stathis had was difficult to treat. Based on the totality of the evidence and the school’s responsibility to maintain a “safe and nonthreatening clinical environment,” he was recommended for dismissal without the possibility of readmission. The Dean in writing upheld the Hearing Committee’s decision. An appeal to the university Chancellor upheld the Dean’s decision. Litigation was subsequently instituted claiming gender, racial discrimination, breach of contract, and lack of due process. Regarding the due process claim, the court stated, relying on *Horowitz*, “This case was, of course, a disciplinary proceeding. It seems to us that Stathis was given reasonable notice of the charges against him and the opportunity to respond to those charges. Further, he was afforded a hearing on the charges, and while not permitted to cross-examine witnesses, he was presented with the opportunity to submit questions to the witnesses in advance of the hearing, and those questions were, in fact, so submitted. As such, we cannot conclude, in this regard, that due process was lacking.”³⁰

Amount of Due Process for Academic Dismissals Is Notice and Opportunity to Be Heard

In *Horowitz*, the court stated “the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making.”¹ This tenet is reinforced in *Ewing* where the court states that “[w]hen judges are asked to review the substance of a genuinely academic decision, [such as in *Ewing*], they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.”²

In *Horowitz*, the student was proficient in basic science course work but deficient in the clinical curriculum. The Supreme Court commented that “competence in clinical courses is as much of a prerequisite to graduation as satisfactory grades” in the traditional basic science curriculum. Performance in the clinical curriculum is also considered “an ‘academic’ judgment because it involves observation of her skills and techniques in actual conditions of practice.”¹ In a concurring opinion in *Ewing*, Justice Powell stated “Judicial review of academic decisions, including those with respect to the admission or dismissal of students, is rarely appropriate, particularly where orderly administrative procedures are followed.”²

However, the Supreme Court argues in nonacademic cases that procedural due process requires that a “student be given oral or written notice of the charges against him, and if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.”³³

Due Process in Graduate Medical Education

Failure to provide due process is also considered in cases of residents being dismissed from training programs or not having their contract renewed (Table 6).³⁴⁻⁴³ Inadequate knowledge of basic concepts, lack of clinical skills, failure of in-service exams, and professionalism apply to GME in a similar fashion to UME.

Graduate medical education differs from UME based on residents being students as well as hospital employees. Residents have renewable 1-year contracts based on performance. Where residents are dismissed or do not receive a renewed contract, questions about what level of due process is owed to them, given their simultaneous student and employee status, are raised.

Case 6

Dr Hernandez was an internal medicine resident. During her second year of residency, her contract was terminated based on

observations from the Chief Resident and Program Director that she lacked the clinical judgment required of a second-year resident, failing to offer leadership and guidance to interns, lack of professionalism when dealing with staff, and weakness in clinical decision-making, assessment, and patient follow-up. Following her termination, Dr Hernandez filed an appeal in accordance with the House Officer’s manual for judgment that her dismissal was arbitrary or capricious and not based on documented evaluations. An Appeal Board meeting was scheduled. Dr Hernandez demanded her attorney be allowed to appear and participate in the process and various documents including patient records be provided to her. Initially, Overlook Hospital denied the requests. In order to avoid litigation, Overlook agreed to allow Dr Hernandez’s attorney to attend and provide advice to Dr Hernandez and review relevant documents except for patient records. Overlook refused the attorney from presenting evidence and having a shorthand reporter transcribe the meeting. Dr Hernandez rejected the offer stating that her attorney should be allowed to attend and present evidence, the incident should be transcribed, and she needed to review patient records which served as the basis for the termination. Dr Hernandez brought legal action, the trial court agreed with Dr Hernandez that she be allowed to have her attorney present and participate in the proceedings offering evidence and presenting arguments on her behalf as well as allowing the proceedings to be transcribed. Based on their ruling, an Appeal Board hearing was held pursuant to the trial court order where Dr Hernandez’s attorney was present and the session transcribed. The Appeal Board upheld its decision to terminate Dr Hernandez. Subsequently, the Supreme Court of New Jersey reviewed the case and held that a resident does not have the right to counsel at a private academic hearing and there is no requirement that it be transcribed.³⁶

Case 7

Dr Allahverdi entered a Family Practice residency at the University of New Mexico. Four months after the start of his residency, the Program Director sent him a letter placing him on administrative leave for inappropriate and threatening comments while on duty and for inappropriate communications with coworkers. A psychiatric evaluation was also requested. During the examination, Dr Allahverdi admitted a problem using foul language. The psychiatric evaluation also commented that Dr Allahverdi’s “personality defenses rationalized his behavior and minimize his own blame.” Five months into the residency, the Family Practice Residency Competence Committee notified him in writing, which he acknowledged receipt, that he was being fired for the following conduct: repeatedly calling women derogatory terms in violation of the University’s sexual harassment policy, and Code of Professional Conduct, threatening those individuals who complained about his inappropriate language in violation of University policy against campus violence and falsification of his residency application for failing to disclose a prior residency program he had been enrolled in. Their decision was based on University staff, rotation evaluations, faculty supervisors, his prior undisclosed

Table 6. Graduate Medical Education Dismissal Cases That Raised Lack of Due Process.

Case and Year Decided	Type of Dismissal	Type of Residency	Reason for Dismissal	Outcome
Failure of in-service exams				
<i>Brown v Hamot Medical</i> ³⁴ (2008)	Academic	Orthopedics	Dr Brown was an orthopedic resident in an ACGME-approved residency at Hamot Medical Center. Her program was 5 years in duration with yearly renewable contracts. During her residency, she performed poorly on the orthopedic-in-training examination placing in the bottom 2% during her third year of residency. Issues in clinical judgment were also raised throughout the program. Dr Brown was counseled by her Program Director that she needed to improve her medical knowledge and clinical performance. During her third year, she was notified that her contract would not be renewed. Dr Brown's case was reviewed by a grievance committee, who supported nonrenewal of the contract, which was affirmed by the Medical Education Committee, the Medical Staff Executive Committee, and upheld by the Board of Directors. Dr Brown filed a lawsuit alleging discrimination, breach of contract, and due process concerns.	Nonrenewal of contract upheld
<i>Schaefer v Brookdale University Hospital</i> ³⁵ (2008)	Academic	Urology	Dr Schaefer was a urology resident in a 6-year ACGME-approved residency that consisted of PGY-1 and PGY-2 years in general surgery and the PGY-3 to PGY-6 years in urology. During his PGY-3 year, he scored in the lowest 6 percentile on the urology-in-service examination and had his clinical skills rated below acceptable performance. His annual performance evaluation noted his skills needed to be improved and that his technical skills and hand dexterity were lacking. Despite the above findings, he was promoted to a PGY-4 year to improve his performance. During his PGY-4 year, his in-service-exam score was in the lowest third percentile and his clinical skills were lacking. He was advised to consider a different specialty. He was allowed to enter his PGY-5 year where his in-service exam score was still in the lowest third percentile and his clinical skills did not match his level of training. During a midyear conference with faculty, he was informed he would not be promoted to the PGY-6 year and his contract would not be renewed and that he had no further recourse. Dr Schaefer subsequently filed a lawsuit alleging breach of contract, defamation, tortious interference with a business relationship, and due process concerns.	Nonrenewal of contract upheld
Lack of clinical skills and judgment				
<i>Hernandez v Overlook Hospital</i> ³⁶ (1997)	Academic	Internal medicine	See text Case 6.	Dismissal upheld
<i>Samper v University of Rochester</i> ³⁷ (1987)	Academic	Anesthesiology	Dr Samper was an anesthesiology resident who claimed to have received unsatisfactory academic evaluations during her residency. She filed a lawsuit claiming sex discrimination, defamation, intentional infliction of emotional distress, breach of contract, and violation of her due process rights based in part on inadequate notice of a meeting to discuss her performance and being denied the right to have an attorney present.	Due process claim dismissed
<i>Shaboon v Duncan</i> ³⁸ (2001)	Academic	Internal medicine	Dr Shaboon was a PGY-2 internal medicine resident who presented with mental health issues after working an alleged 108-hour workweek. She was found to be suffering from depression and from psychological and physical exhaustion and had deprived herself of sleep, a normal appetite, and relaxation. She was treated in a mental health facility and left under her own volition before her treatment had been completed. Her Program Director would not allow her to see patients without approval from her treating psychiatrist and she was directed to report to the department conference room to read medical literature. She was subsequently put on probation for mental health reasons and	Due process claim dismissed

(continued)

Table 6. (continued)

Case and Year Decided	Type of Dismissal	Type of Residency	Reason for Dismissal	Outcome
<i>Ross v University of Minnesota</i> ³⁹ (1989)	Academic	Psychiatry	Dr. Ross was a psychiatry resident. From the start, the faculty were concerned about his performance due to anxiety, preoccupation, slurred speech, and difficulty remembering things. He was treated for depression and able to complete his rotations. Midyear, he was notified by the Program Director in writing that the Progress Committee was concerned about interpersonal issues to include failure to respond to pages, slurred speech, and incomplete notes. He was placed on probation due to difficulty to prioritize tasks, work inefficiently, work rapidly, and lack of flexibility to manage various tasks. He was evaluated and found to have attention deficit disorder, treated with Ritalin, with some improvement. The Progress Committee recommended he repeat his PGY-2 year to gain more experience in patient care and emergency room management. He was offered a new 1-year contract. During his repeat PGY-2 year, he received mixed evaluations with 1 faculty member commenting that he had serious problems that would affect his ability to function as a psychiatrist. He was told his contract would not be renewed and to look for a new position. In spite of some positive research on tardive dyskinesia, his subsequent evaluations were mixed and he was dismissed. He subsequently filed a lawsuit arguing due process concerns and defamation.	Nonrenewal of contract upheld
Lack of professionalism				
<i>Allahverdi v Regents of University of New Mexico</i> ⁴⁰ (2006)	Academic	Family medicine	See text Case 7.	Due process claim dismissed
<i>Easaw v St Barnabas</i> ⁴¹ (1989)	Nonacademic	Internal medicine	Dr. Easaw was a PGY-2 internal medicine resident whose academic record was positive. His final clinical evaluations during his PGY-2 year were good to excellent. He was offered and signed a contract for a PGY-3 year. After missing work in May of his PGY-2 year, his record was reviewed demonstrating he had the highest absentee record of any Intensive Care Unit (ICU) intern. He was found to have prefabricated having chickenpox. The Hospital Director of Medical Education found this a serious offense and brought it up to the Medical Education committee who terminated him. Dr. Easaw alleged he had limited notice of the meeting, limited time to present his version of the facts, and was not notified of his termination until June 29 of his PGY-2 year. He subsequently filed a lawsuit for failure to provide procedural due process for not complying with ACGME requirements and the institution's own policies.	Dismissal deferred. Court required medical center to comply with ACGME criteria and its own internal policy

(continued)

Table 6. (continued)

Case and Year Decided	Type of Dismissal	Type of Residency	Reason for Dismissal	Outcome
<i>Fenje v Feld</i> ⁴² (2005)	Academic	Emergency medicine	Dr Fenje was dismissed from an emergency medicine residency 12 days into the program for his lack of competency to deliver patient care in Scotland. He filed a lawsuit against the Scotland hospital for breach of contract. He subsequently applied for an anesthesiology residency in the United States. Prior to his acceptance into the program, he was interviewed by the Program Director and asked if there were any issues the program needed to be aware about regarding his application, including work in previous training programs and whether he had any “skeletons in his closet.” Dr Fenje did not address the prior training in Scotland. He was admitted into the residency after an interview with an executed contract. Several days after execution of the contract, the Program Director received an anonymous phone call disclosing the Scotland residency and difficulties encountered which were confirmed in a phone call with the Scotland Program Director. Dr Fenje was confronted with this information and stated the incident was due to a clash in personalities. The Anesthesiology Department subsequently terminated Dr Fenje’s residency for dishonesty in the application and interview process. Dr Fenje filed lawsuit alleging violation of his due process and equal protection rights.	Dismissal upheld
<i>Marmion v Mercy Hospital</i> ⁴³ (1983)	Academic	OB/GYN	Dr Marmion was a PGY-4 OB/GYN resident. During his final year, the Program Director discussed administrative and medical deficiencies in his performance that needed to be addressed for him to be promoted to chief resident and complete the program. His performance improved. As Chief Resident, he confronted the Program Director about a change in the institution’s anesthesia policy and that he would not comply with it. He was informed by the Program Director that he might be terminated for not complying with hospital policies. Dr Marmion met with the Program Director and Associate Program Director and was orally notified he was being put on probation and had a number of conditions to comply with. Subsequently, the Director of Medical Education met with Dr Marmion and informed him of the dissatisfaction and grievances the hospital had with him. Dr Marmion followed the conversation by filing a formal grievance according to the hospital policy manual. The Program Director provided Dr Marmion with written notice he was suspended and to vacate the premises until the OB/GYN Residency Review Committee met. The Committee recommended dismissal. The decision was upheld by the Medical Education Committee. Reasons for termination included the inability or willingness to function within the department structure, insubordination, and failure to comply with hospital policies. Litigation followed where due process concerns were raised.	Dismissal upheld

Abbreviation: ACGME, Accreditation Council for Graduate Medical Education.

residency program, and the psychiatrist's evaluation. Dr Allahverdi appealed the decision by filing a grievance. A university GME committee reviewed the record and found "just cause" to support the dismissal but that he should be reinstated and placed on probation subject to several conditions to include zero tolerance for any behavioral difficulties. Dr Allahverdi was notified in writing of the GME committee's constraints which he acknowledged by signing it. A new residency agreement was instituted in early March. Later that month, he received a letter from the Program Director placing him on administrative leave for allegations of misconduct. The Family Practice Committee met and recommended dismissal for violation of his probation based on derogatory language to a hospital employee, failure to complete accurate and timely checkouts, making misrepresentations, and inability to perform all duties of first-year house officers in a satisfactory manner due to inadequate medical knowledge and clinical skills. Dr Allahverdi was notified in writing that he could appeal the decision. Subsequently, Dr Allahverdi challenged the dismissal and raised numerous procedural issues. He subsequently filed a grievance with the University's GME committee. He explained the allegations were unwarranted and requested all documentation made against him. The GME committee met. Dr Allahverdi and his attorney were present. He was allowed to make a statement, answer, and ask questions. The GME committee subsequently interviewed witnesses and ultimately upheld the dismissal. After several procedural challenges, the Dean of the School of Medicine upheld the termination leading Dr Allahverdi to pursue litigation alleging his due process rights were violated.⁴⁰

The Supreme Court of New Jersey in *Hernandez* held that residents are treated as students and therefore subject to the academic requirements of a program.³⁶ Given that Hernandez's dismissal "only involved issues of academic and medical judgment," the relief sought by Hernandez "would diminish the Program Director's ability to exercise academic judgment and deny the Appeal Board the opportunity to apply the procedures that it deems necessary to attain appropriate levels of performance from its residents. As such, Overlook's interest in academic freedom predominates because the relief sought by plaintiff will result in an "appreciable interference" with the Appeal Board's academic judgment." They further commented, "A graduate or professional school is, after all, the best judge of its students' academic performance and their ability to master the required curriculum." Imposition of legal proceedings for purely academic issues would limit academic deliberations.³⁶

Further, "If academic termination hearings are transformed into proceedings that involve legal procedures, the academic hearing would become an adversarial and litigious contest. The panel of doctors would no longer be acting as academics reviewing medical decisions, but rather as judges, ruling on legal issues that they are not trained or qualified to evaluate. The procedure would become complicated, legalistic, and time-consuming and expeditious review of academic judgments would be severely hindered."³⁶ Additionally, "candid

input and evaluations from attending physicians and senior residents regarding the residents' academic performance could be discouraged, raising a concern that residents may escape critical review of poor academic and practical performance. Those evaluations ensure that residents are performing at acceptable levels of competency and professionalism. Without such input, the integrity of the program and the public interest is at stake."³⁶ Given Hernandez's "unique status as a doctor-in-training and considering the strong public policy of ensuring that only qualified physicians serve the public, we find that Overlook is qualified, both substantively and procedurally, to pass judgment on whether plaintiff is fit to practice medicine in its programs. To hold otherwise and not afford great deference to a program's expertise in this area would, in effect, threaten the autonomy of such a program to determine the academic standards by which residents are to be educated, trained, and judged."³⁶

Regarding what is fair procedure, the Court held a fair procedure "includes the right to adequate notice of deficiencies, an opportunity to examine the evidence of those deficiencies used by the hospital to make its academic decision, and the right to present a case to the decision-making authority." The Court continued "a resident also may bring a peer or other physician, including a professor to the hearing. Such a person could consult with the resident and provide a sympathetic ear during the hearings. However, such a person could not act as an adversarial advocate. Those mandates not only accord great weight to the institution's judgment as to a resident's competence but also ensure that all of the relevant evidence is considered and protect against the risk of arbitrary or capricious decisionmaking."³⁶

In *Allaverdi*, the US District Court for the District of New Mexico held the dismissal was academic.⁴⁰ They stated "An academic dismissal is where a student's scholarship or conduct reflects on the personal qualities necessary to succeed in the field in which he or she is studying, and can be based on an at least partially subjective appraisal of those qualities." Based on documentation from the Second Family Practice Committee that outlined 4 reasons for dismissal including, (1) the inability of Dr Allaverdi to follow procedures in patient handoffs, (2) medical knowledge below that expected of first-year house officers (not knowing about cardiac risk factors in a patient with chest pain, not knowing about urine protein content in nephrotic syndrome, and lack of knowledge that one of the patients he managed had a Foley catheter in place), (3) "failure to truthfully report [his] behavior with respect to patient care duties," and (4) "use of unacceptable language in reference to the staff of UNM HSC during the course of patient care activities," the court held the dismissal was academic. Although, as the Court stated, the latter 2 findings may seem disciplinary involving Dr Allaverdi's conduct, however relying on *Horowitz* and other court opinions, they stated that "conduct is academic when it reflects on the personal qualities necessary to succeed in the field in which he or she is studying." Lack of professionalism, lying, and inappropriate language may be viewed as nonacademic "disciplinary" issues; however, the court reasoned that their absence in Allaverdi reflects on the

Table 7. Due Process Considerations in Student Dismissal Cases.

- Due process is a constitutional right that has been incorporated into case law and accrediting body standards.
- Both UME and GME institutions need well-defined criteria that outline academic and professionalism standards and the consequences of not meeting their standards.
- Documentation by faculty is critical if litigation is initiated. Courts will look to the written record in making determinations.^{19,35}
- At the UME level, it is worth having a faculty committee review the performance of students at the end of a clerkship, where the grade is both objective and subjective in nature in contrast to courses or licensing exams that are objective in nature, to preclude complaints that grading decisions are arbitrary and capricious.
- At the GME level, departmental review of resident performance annually, before new contracts are signed or when resident performance does not meet department standards, diminishes substantive due process claims.
- Residents for the most part are treated as students versus employees.
- Framing the dismissal as an academic decision limits the amount of due process needed in contrast to nonacademic (disciplinary action) decisions.
- Written notice, with the consequences of committee action, to students with acknowledgment of receipt of the notice by the student and the opportunity to meet diminishes procedural due process claims for academic dismissals.
- Due process requires that institutional guidelines are followed. In rendering a decision at a departmental or institutional level, the totality of a student's record should be reviewed. The appeal process should be outlined in the institutional policy.
- The Courts recognize that institutions have the right to modify their educational requirements.
- The Courts recognize that disparities may arise in dealing with students on a case-by-case basis given that promotion decisions are made by committee consensus and based on review of the totality of a student's record.⁵⁰
- Implicit in the student's contract with the university upon matriculation is the student's agreement to comply with the university's rules and regulations, which the university is entitled to modify to exercise properly its educational responsibility.
- Student handbooks and catalogs should include the phrase that policies are subject to modification and apply to accepted and current students.

Abbreviations: GME, graduate medical education; UME, undergraduate medical education.

individual's ability to deal in a professional manner with patients and other health-care professionals. Given that Dr Allaverdi's dismissal was academic, the court argued that a hearing was not necessary, all that was required "was the academically dismissed student must have prior notice of faculty dissatisfaction with his or her performance and of the possibility of dismissal, and the decision to dismiss the student must be careful and deliberate."⁴⁰

The initial question the courts address, as outlined above in *Hernandez* and *Allaverdi*, are whether residents are employees or students. Although there is some disagreement, the preponderant opinion by the courts is that residents are treated as students not employees when it comes to dismissal for academic reasons.

In dismissal of an anesthesiology resident for not disclosing information on a residency application that he had been terminated from a previous residency for competency-related issues, the court considered it an academic dismissal based on the nexus between "dishonesty in the application process as undermining his future credibility as a source of information concerning the care of seriously ill patients." The Program Director's "professional judgment that a doctor-in-training who has demonstrated a willingness to withhold damaging information when it serves his purposes cannot be fully trusted to convey all information crucial to the health of the patients committed to his care." This is clearly an academic decision by school officials who possess expertise on the subjective evaluation of medical doctors.⁴² Failure to perform adequately on in-service exams,^{34,35} lack of clinical judgment and skills,³⁴⁻³⁹ pass USMLE Step 3⁴⁴ were also considered academic dismissals. Therefore, the due process afforded academic dismissals

was the guiding principle. In contrast, disruptive behavior and absenteeism in *Easaw*, a resident who was progressing satisfactorily, were considered nonacademic.⁴¹ In *Easaw*, the court treated the resident as an employee with a nonacademic issue resulting in the need for greater due process. Absenteeism, alternatively, if it affected academic performance could be considered as a reason for academic dismissal.⁴¹

Academic Versus Nonacademic Dismissal

The distinction between an academic and nonacademic case is important in determining the due process owed. Tables 5 and 6 outline numerous cases that were treated as academic dismissals and several that were treated as nonacademic (disciplinary) in nature. In the disciplinary cases, students were suspended or terminated for breaking specific "rules of conduct" and insubordinate behavior versus academic dismissals where students lacked the professional qualities required by a profession based on faculty judgment that is subjective in nature.^{40,42}

Nondue Process Claims

Students dismissed for failure of basic science courses,⁴⁵⁻⁴⁷ clerkships,^{45,48,49} Step 3,⁴⁴ and lack of professionalism,⁵⁰ where due process was adequate, have raised equal protection, breach of contract, disability, and discrimination causes of action. Courts have deferred to the standards from *Horowitz* and *Ewing* even where due process was not an issue in adjudicating these causes of action.^{1,2}

Professionalism

Professionalism is also an UME and GME accreditation standard.^{51,52} Each institution sets its own standards consistent with its accrediting body. Failure to comply with institutional standards has led to student dismissal. Although academics are important, professional behavior toward patients, peers, and faculty is just as critical.¹ Failure to show up on time for clinical rotations,¹ not meeting clerkship objectives,¹⁹ deceit in an application,^{40,42} drug conviction,²⁸ or abusive behavior toward a peer^{30, 40} are deemed unprofessional behavior. Tables 5 and 6 outline several cases where professionalism was an issue. In adjudicating student dismissal cases for unprofessionalism, the courts utilized the standards outlined above on whether the issue was academic or nonacademic in determining the amount of due process owed the student.

Lapses in professional judgment are sometimes difficult to “prosecute” as compared to purely academic issues. They are often difficult to address with students, residents, and even faculty. These lapses may eventually lead to disciplinary actions by state medical licensing boards.⁵³ These failures are at times ignored or passed up the chain of command when there were findings to terminate the student or resident earlier in the educational continuum.⁵⁴ The courts will look to the judgment of the faculty on whether the individual in question met the institution’s standards provided due process was adequate.² In dealing with these type of cases, documentation is critical. With adequate documentation, promotions committees and residency review committees have a record they can use in reviewing the totality of a student’s record to render a decision.

Conclusion

Inherent in any academic enterprise are students who lack the academic ability or have unprofessional attributes in their behavior. Academic institutions have a responsibility to protect the public and may need to remediate or dismiss students. Student dismissal has the potential to lead to litigation by deprivation of potential liberty or property interests without due process. Due process considerations in student remediation/dismissal are summarized in Table 7.

Noteworthy is that in several UME and GME cases, committees that evaluated the entire student or resident’s record recommended dismissal. On appeal to a dean or other administrator, the committee’s decision was not upheld. As documented above, many of these cases continued on to litigation creating more work for faculty and potentially compromising patient care at the GME level.

As outlined in *Horowitz*, the courts will usually uphold a school’s decision to dismiss a student where the entire student record has been reviewed, due process provided, and the institution complied with its own policies that were made available to students on matriculation.^{1,2} For nonacademic decisions, more due process is required. As Justice Powell commented in *Ewing*, “Judicial review of academic decisions, including those with respect to the admission or dismissal of students,

is rarely appropriate, particularly where orderly administrative procedures are followed.”²

Authors’ Note

The opinions expressed are those of the authors and do not reflect the official positions of the Uniformed Services University, the US Army, Navy, Air Force, or DoD.

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